

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DAVID CLABAUGH, Individually, and
MARYANN CLABAUGH, Individually,

Plaintiffs,

v.

CITY OF FIRCREST, a Washington
Municipality Corporation,

Defendant.

CASE NO. C10-1484BHS

ORDER GRANTING MOTION
TO REMAND PURSUANT TO
28 U.S.C. § 1447(c)

This matter comes before the Court on Plaintiffs' motion for remand pursuant to 28 U.S.C. § 1447 (c). The Court has considered the pleadings filed in support of the motion and the remainder of the file and hereby grants the motion for the reasons stated herein.

On September 15, 2010, Defendant removed this action. Dkt. 1. On October 7, 2010, Plaintiffs moved the Court to remand the matter to state court. Dkt. 9. Defendant did not oppose Plaintiffs' motion.


This Court will remand the case to State Court "if at any time prior to final judgment it appears that the District Court lacks subject matter jurisdiction." 28 U.S.C. § 1447(c). A review of the record reveals that Plaintiffs' complaint did not plead and

1 Plaintiffs now assert they have no intention of pleading any questions of federal law;
2 additionally, the parties are not diverse. *See* Dkt. 1, Ex. 2 (copy of complaint); *see also*
3 Dkt. 10 ¶ 2 (Declaration of John R. Connelly Jr.). These facts establish that the Court
4 lacks subject matter jurisdiction over this case. *See* 28 U.S.C. 1447(c).

5 Further still, Defendant did not oppose Plaintiffs' motion to remand. When "a
6 party fails to file papers in opposition to a motion, such failure may be considered by the
7 court as an admission that the motion has merit." Local Rule CR 7(b)(2). The Court
8 applies this rule herein as a secondary basis on which to remand the matter to state court.

9 Therefore, it is hereby **ORDERED** that Plaintiffs' motion to remand is
10 **GRANTED** for the reasons discussed herein.

11 DATED this 29th day of October 2010.
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16 BENJAMIN H. SETTLE
United States District Judge
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